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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 90

ANNA S. BAINBRIDGE, PETITIONER,

vs.

MERCHANTS & MINERS TRANSPORTATION COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED MAY 19, 1932

CERTIORARI GRANTED OCTOBER 10, 1932

(36,781)

(36,781)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 90

ANNA S. BAINBRIDGE, PETITIONER,

vs.

MERCHANTS & MINERS TRANSPORTATION COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANA

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[fols. a-1]

IN COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

Docket Entries

Sums. trespass, Exit Dec. 17, 1929, Ret. 3rd Monday Jan. 1930. Served 12/30/29.

Jan. 22, 1930, James M. West, 3rd, Attorney for Defendant, de bene esse.

Sept. 26, 1931, Statement of Claim and notice to file Affidavit of Defense filed.

Oct. 10, 1931, Rule to dismiss action for want of jurisdiction, proceedings to stay meanwhile.

Eo Die. Petition filed.

Nov. 6, 1931. Rule absolute.

Nov. 20, 1931. Certiorari of Supreme Court as of Jan. 1932, No. 136, brought into office.

Nov. 23, 1931. Afft. of Service of appeal from Court order upon Hon. Thos. D. Finletter on Nov. 20, 1931 filed.

Nov. 23, 1931. Afft. of Service of appeal upon Biddle, Paul, Dawson & Yocum, Attorneys for Defendant, on Nov. 20, 1931, filed.

Nov. 25, 1931. Opinion on ruling of Court of Nov. 6, 1931 filed.

[fol. 2] In Court of Common Pleas of Philadelphia County

Plaintiff's Statement of Claim

The plaintiff above named brings this action against the defendant above named to recover damages upon a cause of action whereof the following is a statement:

1. On and prior to December 30, 1927, the defendant was engaged in the operation of a steamship line in interstate and foreign commerce upon navigable waters, and in the operation of a particular steamship, the S. S. Chatham, which, on or about the said date, was temporarily, between voyages in interstate and foreign commerce, moored at a certain pier of the said defendant's in the City of Philadelphia, State of Pennsylvania.

2. At and prior to the said time, the said steamship was under the exclusive control and management of the defendant, its servants, agents or employees.

3. On and for a long time prior to the above mentioned date, the plaintiff was employed by the defendant as a member of the crew upon the said steamship, the S. S. Chatham, her duties as said member of the crew being to act as a maid and among others to make up the berths in the staterooms to which she was assigned by the said defendant, her employer.

4. In a certain stateroom upon the said steamship were a lower and an upper berth set against one of the walls of the said stateroom, the said lower berth being wider than the said upper berth which was directly above it.

5. At and prior to the aforesaid date, the said stateroom and the lower and the upper berths therein, and the condi-[fol. 3] tion thereof, were under the sole and exclusive control and management of the defendant, its servants, agents or employees.

6. On or about the date aforementioned, at or about 9:30 o'clock A. M., the plaintiff, Anna S. Bainbridge, was lawfully in the said stateroom, and, in pursuance of the directions of her superior, was engaged in preparing the said upper berth therein, when and because of the defective and torn condition of the bedding of the said lower berth her foot caught in same and she was caused to fall to the floor and to strike a bucket placed thereon by a fellow servant of the said defendant, and to suffer the injuries hereinafter described, by reason entirely of the negligence of the defendant, its servants, agents or employees, and without any negligence upon the part of the plaintiff.

7. The defendant, its servants, agents or employees was negligent in that:

(a) There existed in the said lower berth a defect known to the said defendant, which caused a condition dangerous to the health and safety of its employees.

(b) No attempt had been made by the defendant, its servants, agents or employees to repair or remedy the said defect, or to make the said berth safe for the performance

of her duties by the said plaintiff, although the said defect had existed continuously for a long time prior to the said date.

(c) No warning or notice of the dangerous condition of the said lower berth was given.

(d) The said berth was in such a dangerous condition that the plaintiff was caused to fall.

[fol. 4] (e) The said bucket was put upon the floor in a place dangerous to the plaintiff in the performance of her duties, without her knowledge, by an employee of the defendant.

(f) The said berth and defect therein, and the said bucket were placed and permitted to remain in a condition contrary to the Laws of the United States of America.

8. The servants, agents or employees herein referred to were at all times and for all acts and omissions herein set forth the servants, agents or employees of the defendant, and engaged in and upon the business of the defendant.

9. By reason of the said occurrence, the plaintiff, Anna S. Bainbridge, suffered contusions of her entire body, severe and permanent injury to the muscles and nerves of her neck, injury to her spine, concussion of the brain, was otherwise injured in and about her head, neck, arms, legs and body, was internally and permanently injured, and suffered a severe shock to her nerves and nervous system.

10. Because of the said injuries, the plaintiff, Anna S. Bainbridge, has suffered and will suffer mental and physical pain, anguish and distress; she has suffered and will suffer damage by reason of her loss of earning power; she has spent and will spend money for medicine and medical attendance; she has suffered and will suffer loss by reason of damage to her personal property.

11. Wherefore plaintiff, Anna S. Bainbridge, claims damages of the defendant in the sum of $50,000.

(Stamped:) William Charles Brown, Attorney for plaintiff.

[fol. 5] *Duly sworn to by Anna S. Bainbridge. Jurat omitted in printing.*

IN COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

PETITION FOR RULE TO SHOW CAUSE WHY THE ABOVE-ENTITLED ACTION SHOULD NOT BE DISMISSED FOR WANT OF JURISDICTION

[1][The petition of Merchants & Miners Transportation Company, defendant, respectfully represents:

1. Your petitioner is a corporation authorized and existing under and by virtue of the laws of the State of Maryland, and registered to do business in the Commonwealth of Pennsylvania.

2. Your petitioner's principal office is located at 112 South Gay Street in the City of Baltimore and the State of Maryland.

3. Plaintiff, a former member of the crew of your petitioner's Steamship "Chatham", instituted the above entitled action on December 27, 1929. The writ of summons [fol. 6] was duly served upon the Secretary of the Commonwealth of Pennsylvania on December 30, 1929.

4. Your petitioner on January 22, 1930, caused an appearance de bene esse to be entered in the action so that objection might be made to the jurisdiction of your Honorable Court in the event plaintiff elected to maintain an action for damages under the provisions of Section 33 of the Merchant Marine Act of 1920, U. S. Code, Title 46, Section 688; 41 Statutes at Large 1007; and a copy of the order to enter said appearance together with a letter in explanation of the action, copy of which is attached hereto and made a part hereof, was duly served upon plaintiff's attorney.

5. On September 26, 1931, plaintiff filed her statement of claim, wherein she elected to maintain an action for damages under the provisions of Section 33 of the Merchant Marine Act of 1920. A copy of said statement of claim was served on September 26, 1931, upon your petitioner's counsel.

6. Section 33 of the Merchant Marine Act of 1920, U. S. Code, Title 46, Section 688; 41 Statutes at Large 1007, provides as follows:

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the [fol. 7] right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. *Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.*"

Wherefore your petitioner prays your Honorable Court to issue a rule upon plaintiff to show cause why the above entitled action should not be dismissed for want of jurisdiction. All proceedings to stay meanwhile.

(Signed) James M. West, III, Attorney for Petitioner.][1]

Duly sworn to by James M. West, 3rd. Jurat omitted in printing.

[fol. 8] In Court of Common Pleas of Philadelphia County

Rule

And Now, October 10, 1931, upon consideration of the within petition, and on motion of James M. West, 3rd, Esquire, the Court grants a rule on the plaintiff to show cause why the above entitled action should not be dismissed for want of jurisdiction. Returnable October 16, 1931, at 1:30 P. M. All proceedings to stay meanwhile.

(Signed) Finletter.

IN COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

ORDER OF THE COURT

November 6, 1931.—Rule Absolute.

IN COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

OPINION

FINLETTER, P. J.:

This is a suit to recover damages for personal injuries sustained by a seaman, alleged to have been caused by the negligence of the defendant.

[fol. 9] It therefore is based upon Section 33 of the Merchant Marine Act of 1920, U. S. Code, Title 46, Section 688, 41 Statutes at Large 1007, commonly called the "Jones Act".

Defendant raised the question of jurisdiction by petition presented immediately after the filing of plaintiff's statement. Until the statement was filed, defendant could not know whether or not plaintiff's intended claim was under the Merchant Marine Act. The summons might relate to any action of trespass. When by the statement it was evident that plaintiff had elected to proceed under the Act, defendant made prompt objection to the jurisdiction.

Before the passage of the Jones Act seamen possessed the following remedies, (1) an action in rem in the Federal Courts for maintenance and cure, wages, and indemnity, if the vessel is unseaworthy; (2) an action in personam in either Federal or State Courts for the like causes; to which is added by Section 33 of the Jones Act an action for damages for negligence in either the State or Federal Courts.

It was determined in Engel v. Davenport, 271 U. S. 33, 46 S. Ct. 410, 70 L. Ed. 813, that jurisdiction is concurrent in both State and Federal Courts.

Question is raised in the instant case whether the jurisdiction of the State Courts is limited to the district of the residence of the defendant, or, in the case of a corporation, to the district of its principal office; or whether, on the other hand, all State Courts are open to such claims.

The answer depends upon the interpretation of the last part of Section 33, which provides:

"Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides, or in which his principal office is located."

[fol. 10] It is argued by plaintiff that the provision cited above was held in the Engel case, and others, to prescribe only the venue of actions brought in the Federal Courts. It is true that they do hold that actions brought in the Federal Courts must be in the district of residence, but it does not follow, and was not held, that actions brought in State Courts were not subject to the same limitation.

The legislative reasons for limiting the new right of action in Federal Courts to the residence of the defendant apply with equal force to actions brought in State Courts.

Much is made by the plaintiff of the use of the word "district" in the Act, it being argued that that word has special significance and limitation to Federal districts. It is not in fact so limited. And it is not true, as argued by plaintiff, that Federal Courts alone have districts. For example, our own court is "The Court of Common Pleas, No. 4, of the First Judicial District of Pennsylvania".

In Patterson v. Standard Oil Co., 41 Fed. (2) 219 Judge Hand said: "The clause 'the court of the district in which the defendant employer resides' fits a State Court properly enough because the word 'district' will answer the local jurisdiction of such a court as well as a Federal district. The use of the singular is not significant, since the phrase 'the court' may have been used distributively, i. e., 'any court'. Besides, the earlier express provisions leave no doubt."

In Caceres v. U. S. Shipping Board, 299 Fed. 968, suit was brought in a New York State Court. The action was removed to the Federal Court, and was there dismissed because the defendant's principal office was not in New York, the Court saying, "The motion to dismiss the complaint * * * must be granted, not in the exercise of discretion, but under the express provisions of the Merchant Marine Act".

A similar result followed in Wienbroer v. U. S. Shipping Board, 299 Fed. 272.

In our opinion we have no jurisdiction because the principal office of the defendant is not within the First Judicial District of Pennsylvania.

[fol. 11] In Supreme Court of Pennsylvania for the Eastern District

No. 5629, December Term, 1929

Anna S. Bainbridge, Plaintiff,

—

Merchants & Miners Transportation Company, a Maryland Corporation, Defendant

Court of Common Pleas No. 4 of the County of Philadelphia

Nature of Case (See Note): Question of Jurisdiction in Law

Appeal and Affidavit—Filed Nov. 20, 1931

Enter appeal on behalf of Anna S. Bainbridge from the Order of the Court of Common Pleas No. 4 of the County of Philadelphia Returnable Monday, December 7th, 1931.

(Signed) Wm. Chas. Brown, Attorneys for Appellant.

To Thomas Robbins, Prothonotary, Supreme Court, Eastern District.

County of Philadelphia, ss:

William Charles Brown, being duly sworn, saith that said Appeal is not taken for the purpose of delay, but because Appellant believes she has suffered injustice by the order from which she appeals.

Wm. Chas. Brown.

Sworn and subscribed this 18 day of November, A. D. 1931. (Sgd.) Marie B. Dallas, Notary Public. My commission expires March 5, 1933. (Seal).

NOTE.—This space need not be filled in unless the case is in one of the following classes:

(1) Workmen's Compensation.

(2) Mandamus.

(3) Quo Warranto.

(4) Injunction.

(5) Decree requiring an account (see Act of June 24, 1895, Sec. 1, P. L. 243).

(6) Capital Case.

(7) Question of Jurisdiction in Law or Equity (see Act of March 5, 1925, Sec. 3, P. L. 23).

It is important that the prothonotary should be notified as above, in order that the Certiorari may be drawn returnable according to law.

[File endorsement omitted.]

[fol. 12] IN SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

[Title omitted]

APPELLANT'S SUBSTITUTED ASSIGNMENT OF ERROR—Filed Jan. 5, 1932

The appellant, Anna S. Bainbridge, assigns as error the action of the Court below in making absolute the rule of the appellee to show cause why the above entitled action should not be dismissed for want of jurisdiction, the rule and the court's action thereon being as follows:

Rule

"And now, October 10, 1931, upon consideration of the within petition, and on motion of James M. West, 3rd, Esquire, the Court grants a rule on the plaintiff to show cause why the above entitled action should not be dismissed for want of jurisdiction. Returnable October 16, 1931, at 1.30 P. M. All proceedings to stay meanwhile.

(Sgd.) Finletter, J.

Order of the Court

"November 6, 1931.—Rule Absolute."
(Signed) Edwin J. McDermott, Attorney for Appellant.

[File endorsement omitted.]

[fol. 13] In Supreme Court of Pennsylvania, Eastern District, January Term, 1932

No. 136

Anna S. Bainbridge, Appellant,

v.

Merchants & Miners Transportation Company, a Maryland Corporation

Appeal from Order of the Court of Common Pleas No. 4, Philadelphia County

Opinion—Filed Feb. 3, 1932

Per Curiam:

The order of the court below dismissing this action for want of jurisdiction is affirmed on the opinion of Judge Finletter, which clearly and adequately discusses the question involved.

[File endorsement omitted.]

[fol. 14] In Supreme Court of Pennsylvania, Eastern District

[Title omitted]

Order Endorsed on Petition for Reargument

"March 14, 1932.—Reargument refused. Per Curiam."

[fol. 15] Prothonotary's certificate to foregoing transcript omitted in printing.

[fol. 16] Certificate of Chief Justice omitted in printing.

Prothonotary's Certificate to Chief Justice omitted in printing.

[fol. 17] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 10, 1932

The petition herein for a writ of certiorari to the Supreme Court of the State of Pennsylvania is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 36,781. Pennsylvania Supreme Court. Term No. 90. Anna S. Bainbridge, petitioner, vs. Merchants & Miners Transportation Company. Petition for a writ of certiorari and exhibit thereto. Filed May 19, 1932. File No. 36,781.

FILE COPY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 967 90

ANNA S. BAINBRIDGE, PETITIONER,

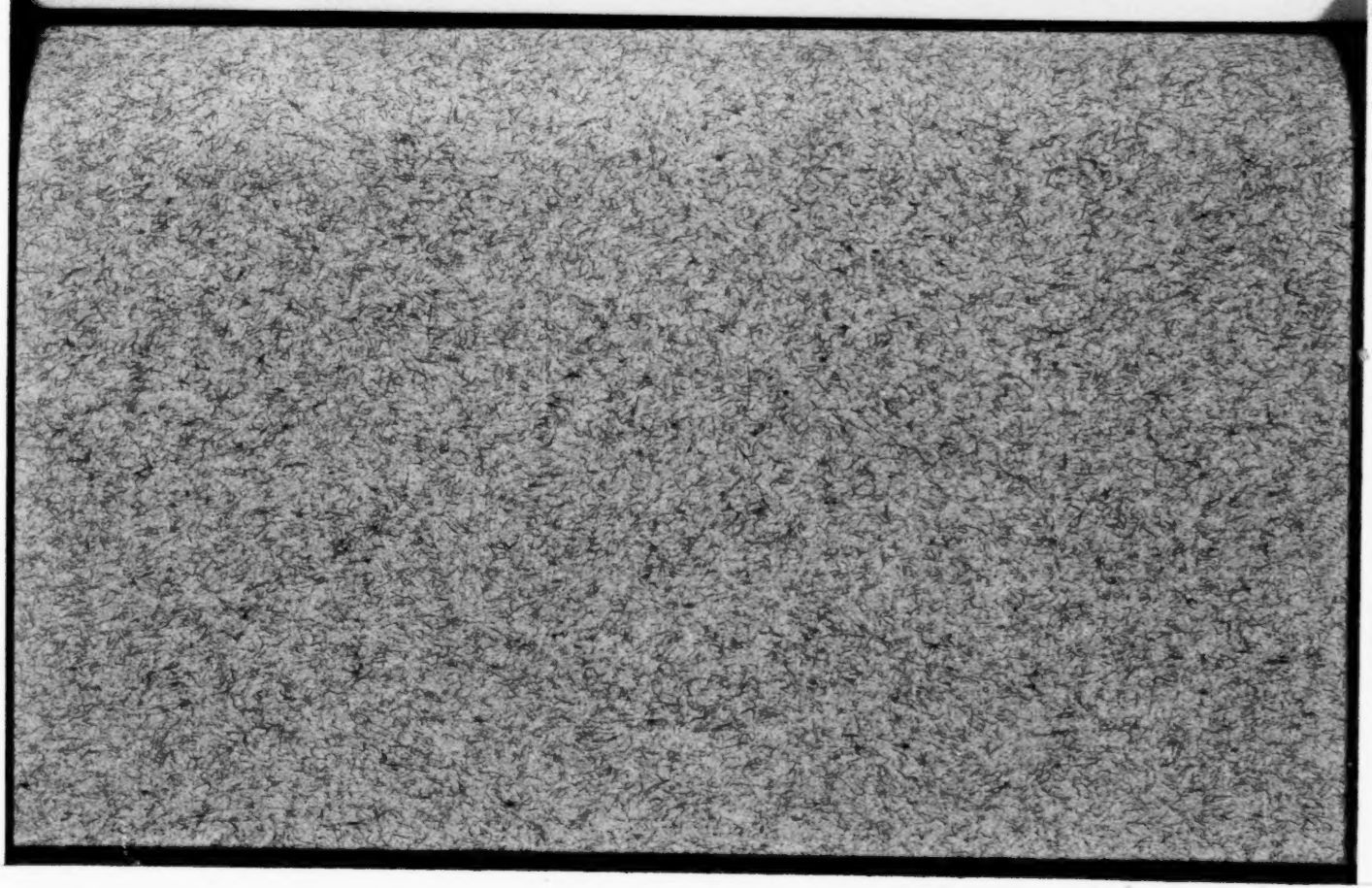
vs.

MERCHANTS & MINERS TRANSPORTATION COMPANY.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA AND BRIEF IN SUPPORT THEREOF.

EDWIN J. McDERMOTT,
THOMAS D. McBRIDE,
WILLIAM CHARLES BROWN,
Counsel for Petitioner.

(36,781)



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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 967

ANNA S. BAINBRIDGE, PETITIONER,

vs.

MERCHANTS & MINERS TRANSPORTATION COMPANY.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of Anna S. Bainbridge respectfully shows to this Honorable Court:

A.

The Question Presented.

May the venue provision of Section 33 of the Jones Act of 1920, which directs—

> "Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides, or in which its principal office is located."

be properly construed so as to apply to state courts, when actions pursuant to the section are brought therein, or is it confined in its application to federal courts?

B.

Statute Involved.

The Merchant Marine Act of 1920, popularly known as the "Jones Act," Section 33; U. S. Code, Title 46, Section 688; 41 Statutes at Large, 1007:

> "Any seaman who shall suffer personal injuries in the course of his employment may, at his election, maintain an action at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. *Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which its principal office is located.*"

C.

Statement of Matter Involved.

Your petitioner, Anna S. Bainbridge, brought an action in the Court of Common Pleas, No. 4, of Phila-

delphia County, on December 17, 1929, pursuant to Section 33 of the Jones Act.

Your petitioner was on and prior to December 30, 1927, employed by the respondent as a seaman on board the latter's vessel, the S. S. Chatham. While the "Chatham" was moored to the respondent's wharf in Philadelphia County on the above date, your petitioner, while engaged in the course of her employment, was caused to fall and to receive very serious and permanent injuries by reason of the negligence of the respondent, her employer.

Your petitioner is, and at the times above named was, a citizen and resident of Philadelphia County, Pennsylvania. The respondent is a Maryland corporation, with its principal office in Baltimore, Maryland. It is registered to do business in Pennsylvania as a foreign corporation, and in that State its principal place of business is in Philadelphia.

The respondent presented a petition for a rule to show cause why your petitioner's action should not be dismissed for want of jurisdiction on the ground that the respondent's principal office was located in Baltimore, Maryland, and that by virtue of the last sentence of the Jones Act, it could be sued only in that city (R. 5a), even though the accident occurred in, and its principal place of business in Pennsylvania was located in, Philadelphia County.

The Common Pleas Court dismissed your petitioner's action by making absolute the rule (R. 8a). Your petitioner appealed to the Supreme Court of Pennsylvania, assigning as error the order of the

Common Pleas Court (R. 11). On February 3rd, 1932, the Supreme Court affirmed the order of the Common Pleas Court (R. 13). Your petitioner presented a petition for reargument, which was refused by the Supreme Court on March 14th, 1932 (R. 16).

If this action is not properly brought, then your petitioner is without any redress for the personal injuries suffered by her, since another action at this time would be barred by the two year statute of limitations.

D.

Reasons for Allowance of Writ.

1. The Supreme Court of Pennsylvania construed the Act of Congress (The Merchant Marine Act of 1920, Section 33; U. S. Code, Title 46, Section 688; 41 Statutes at Large, 1007), to mean that the venue provision therein applies to State courts, as well as to Federal courts. This Court has not as yet construed that act in this respect. The case involves a decision on an important question of Federal law not yet decided by this Court.

2. There is a conflict in the decisions upon the question presented among Federal and State courts. Some courts hold the application of the venue provision restricted to Federal courts, and others hold it applicable to both Federal and State courts.

3. This Court has repeatedly held that, when a Federal cause of action is enforced by an action in a State court, the jurisdiction and limitations of that court and

the procedure of the action therein are to be determined solely by the authority creating that court, and that it is beyond the power of Congress to regulate the jurisdiction of State courts, or the procedure of actions therein. The Supreme Court of Pennsylvania has said that Congress has, by the last provision of the Jones Act, sought to regulate jurisdiction and procedure not only of Federal courts, but also of State courts. If this interpretation be correct, then, in the light of the decisions of this Court, the Jones Act is in that respect unconstitutional.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Pennsylvania, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and proceedings in the case numbered and entitled on its docket, Anna S. Bainbridge, appellant, *vs.* Merchants & Miners Transportation Company, a corporation, January Term, 1932, No. 136, and that the said order and judgment of the Supreme Court of Pennsylvania may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

ANNA S. BAINBRIDGE,
By EDWIN J. McDERMOTT,
THOMAS D. McBRIDE,
WILLIAM CHARLES BROWN,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 967

ANNA S. BAINBRIDGE, PETITIONER,

vs.

MERCHANTS & MINERS TRANSPORTATION COMPANY.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

One opinion was delivered by the Common Pleas Court. It was written by Common Pleas Judge Thomas D. Finletter. It appears on page 8a of the record and is reported in conjunction with the opinion of the Supreme Court. The opinion of the Supreme Court of Pennsylvania (per curiam) was filed February 3, 1932, and appears on page 13 of the record.

It is reported in 306 Pa. 205 (Advance Reports, April 15, 1932), and in 159 Atlantic 19 (Advance Reports, March 26, 1932).

II.

Jurisdiction.

1. The jurisdiction of this Court is invoked under Section 237 (*b*) of the Judicial Code, as amended by the Act of February 13, 1925, ch. 229 (43 Statutes 963; 28 U. S. C. A. 344).

2. The judgment of the Supreme Court of Pennsylvania was entered February 3, 1932. Petition for reargument was denied March 14, 1932.

3. It was contended by your petitioner in the Common Pleas Court that the venue provision of the Jones Act was limited to Federal courts. The Common Pleas Court held it applied to State, as well as to Federal, courts (R. 10a). This was assigned as error in the Supreme Court (R. 12). The State Supreme Court affirmed the order of the Common Pleas Court (R. 13).

4. The question presented is a proper one for the exercise by this Court of its supervisory powers.

Talbot v. *Sioux City First Nat. Bank*, 185 U. S. 172.

Jones Nat. Bank v. *Yates*, 240 U. S. 541.

Tazewell v. *State ex rel. Sullivan*, 272 U. S. 613.

The petition is timely, the petition for reargument having bene denied by the Pennsylvania Supreme Court on March 14, 1932:

Citizen's Bank of Michigan City v. *Opperman*, 249 U. S. 448.

III.

The Facts.

The facts are stated in the petition, page 2. We emphasize that your petitioner was, at the time of the accident and at the time the action was brought, a citizen and resident of Philadelphia County, and that the accident occurred in Philadelphia County.

IV.

Specification of Error.

The Supreme Court of Pennsylvania erred in construing the venue provision of Section 33 of the Jones Act to apply to State courts.

V.

ARGUMENT.

Summary of Argument.

Point A. The question presented involves an important question of Federal law not as yet decided by this Court.

Point B. There is a conflict of decisions among Federal and State courts upon the question presented.

Point C. The construction placed upon the Jones Act by the Pennsylvania Supreme Court makes the statute in that respect unconstitutional.

POINT A.

The case involves a decision on an important question of Federal law not decided by this Court.

The last sentence of Section 33 of the Jones Act was first presented to this Court for construction in *Panama Railroad Co.* v. *Johnson,* 264 U. S. 375, 44 S. Ct. 391, 68 L. Ed. 748, where it was contended that the statute, by that provision, conferred an exclusive jurisdiction of the subject matter upon the Federal district court designated. This Court construed the statute as not to confer jurisdiction over the subject matter involved but only to regulate the venue of actions brought in Federal district courts. The case involved an action in a Federal court of a district other than that in which the employer's principal office was located.

The next contention as to the construction of the statute was made in *Engel* v. *Davenport,* 271 U. S. 33, 46 S. Ct. 410, 70 L. Ed. 813, and in *Panama Railroad Co.* v. *Vasquez,* 271 U. S. 557, 46 S. Ct. 410, 70 L. Ed. 813, and was that the provision conferred an exclusive jurisdiction on Federal courts. This Court held that State courts have concurrent jurisdiction to enforce the causes of action created by the statute, because, by the Judiciary Act of 1789, there is saved to suitors in all cases involving admiralty and maritime jurisdiction the right of a common law remedy where the common law is competent to give it.

The identical question here raised as to whether or not the provision regulates the venue in State courts was presented to this Court for review and determina-

tion when a certiorari was granted in *Tazewell, petitioner,* v. *State ex rel. Sullivan,* 272 U. S. 613, but upon argument it was disclosed that in that case the question was moot and the certiorari dismissed for that reason in 277 U. S. 575. In this case, however, the question is squarely presented. Since the two-year statute of limitations has expired the petitioner is without any remedy to redress the injuries suffered if this action is not sustained, and the decision of the courts below involved but one question and that the construction of the last sentence of the section.

The question has, therefore, not, as yet, been determined by this Court. It is of great importance to thousands of merchant seamen and their dependents, and the uncertainty as to what course they shall pursue in prosecuting the right of action granted them by the Merchant Marine Act is a great present and potential source of confusion. It should have a final determination by this Court so that their rights may be clarified.

POINT B.

Conflict Among Decisions.

The following cases hold that the venue provision is limited in its application to Federal courts, and that when an action is brought, pursuant to the statute, in State courts the venue is to be determined by the laws of the State regarding actions against foreign corporations:

Lynott v. *Great Lakes T. Co.,* 234 N. Y. 626, 202 N. Y. App. Div. 210.

Pattronne v. *Howlett,* 237 N. Y. 626.

Rodigrues v. *Transmarine Corp.*, 216 N. Y. App. Div. 337.

Bennet v. *Connelly*, 122 N. Y. Misc. 149.

State ex rel. Sullivan v. *Tazewell*, 123 Ore. 326.

The following cases hold that the venue provision applies to both Federal and State courts:

Patterson v. *Standard Oil of N. J.*, 41 F. 2nd, 291.

Cook v. *Alaska S. S. Co.*, 8 F. 2nd, 291.

Villiard v. *Emergency Fleet Corp.*, 1 F. 2nd, 570.

Weinbroer v. *Emergency Fleet Corp.*, 299 F. 2nd, 972.

A seaman who is injured is faced with the necessity of suing in some court, and with the conflict presented his rights are of little moment. Under the decision of the Pennsylvania Supreme Court he cannot sue in a court of the State in which the accident occurred, if that court should choose to follow the interpretation placed upon the statute; for practical purposes he is confined to the Federal court of the district designated. The confusion upon the question and the conflict of the decisions should be cleared by a determination of this Court, so that the rights of seamen may be made certain.

POINT C.

The construction placed upon the statute by the Court below makes the Act in that respect unconstitutional.

This Court has repeatedly declared that when a cause of action arising under and by virtue of Federal

enactment is enforced in a State court, it is by reason of the supremacy clause of the United States Constitution, and that the jurisdiction of that court, its powers, limitations and competency, and the procedure of actions therein, are determinable solely by the authority conferred by the Government creating it; and that it does not for such purpose become a Federal court and subject to regulation as such by Congress, but retains its identity and individuality as a court of the State creating it.

In *Mondou* v. *N. Y., N. H. & H. R. Co.*, 223 U. S. 1, the question arose whether or not a State court could refuse to enforce a cause of action arising under the Federal Employers' Liability Act. The court stated the principle upon which Federal causes of action are enforceable in State courts, p. 59:

> "We conclude that rights arising under the act in question may be enforced as of right in the courts of the States when their jurisdiction, as prescribed by local laws, is adequate to the occasion."

This principle was the basis of this Court's decisions in:

Martin v. *Hunter's Lessee*, 1 Wheat. 304, 330;
Houston v. *Moore*, 5 Wheat. 1, 27-28;
Ex parte McNiel, 13 Wall. 236, 243;
Claflin v. *Houseman*, 93 U. S. 130.

In the Mondou case, this Court, speaking through Mr. Justice Van Devanter, said, page 56:

> "Because of some general observations in the opinion of the Supreme Court of Errors, and

> to the end that the remaining ground of decision may be more accurately understood, we deem it well to observe that *there is not here involved any attempt by Congress to regulate the jurisdiction of State courts or to control or affect their modes of procedure,* but only a question of the duty of such court when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws to take cognizance of an action to enforce a right of civil recovery, arising under an act of Congress, and susceptible of adjudication according to the prevailing modes of procedure."

The decision of this Court which most clearly shows the error in the decision of the Supreme Court of Pennsylvania is *Minneapolis & St. L. R. R.* v. *Bombolis,* 241 U. S. 211, where it was contended that the Seventh Amendment to the Federal Constitution, requiring issues of fact to be determined by a unanimous verdict, cast upon Congress the duty of subjecting every right created by it to a limitation that such right should not be enforced in any court whatever, whether created by Congress or not, unless the court enforcing the right becomes bound by the restriction of the amendment. The case involved the enforcement of the Federal Employers' Liability Act in a Minnesota State court in which a five-sixth verdict was permitted under State law. This Court clearly stated that such a contention granted to Congress a power it did not possess, and that a State court entertaining a cause of action arising under Federal law retained its individuality as a

court of the State creating it, and applied its own rules of procedure, and was subject only to the limitations placed upon its jurisdictional powers by the authority creating it; and that it did not for such purpose become a Federal court and subject to regulation as such by Congress.

The Supreme Court of Pennsylvania has said that Congress has, by the last provision of Section 33 of the Jones Act, sought to regulate jurisdiction and procedure not only of Federal courts, but also of State courts. If this interpretation be correct, then, in the light of the decisions of this Court, the Jones Act is in that respect unconstitutional.

V.

Conclusion.

Your petitioner respectfully submits that the final determination by this Court as to the proper construction of the Jones Act is of the utmost importance to the thousands of merchant seamen and their dependents who must seek redress under that statute. The decision of the Pennsylvania Supreme Court adds further uncertainty to the confusion already existing, and the construction which that court has given to the statute raises a very real doubt as to its constitutionality.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory power, in order that the proper construction to be placed upon the Jones Act shall be finally

determined, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Pennsylvania Supreme Court and finally reverse it.

EDWIN J. McDERMOTT,
THOMAS D. McBRIDE,
WILLIAM CHARLES BROWN,
Counsel for Petitioner.

(2046)

FILE COPY

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1932. No. 90.

ANNA S. BAINBRIDGE, Petitioner

v.

MERCHANTS & MINERS TRANSPORTATION COMPANY.

Brief for Petitioner..

EDWIN J. McDERMOTT,
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IN THE

Supreme Court of the United States

October Term, 1932. No. 90.

ANNA S. BAINBRIDGE, Petitioner,

vs.

MERCHANTS & MINERS TRANSPORTATION COMPANY.

BRIEF FOR PETITIONER.

I.

STATEMENT OF MATTER INVOLVED.

The petitioner, Anna S. Bainbridge, on December 30, 1927, was employed by the respondent, the Merchants & Miners Transportation Company, on board the latter's vessel, the S. S. Chatham. While the "Chatham" was moored to the respondent's wharf in Philadelphia County, the petitioner, during the course of her employment, was caused to fall and receive injuries by reason of the negligence of her employer, the respondent. Your petitioner brought an action in the Court of Common Pleas, No. 4, of Philadelphia County, on December 17, 1929, pursuant to Section 33 of the Jones Act, to recover damages for her injuries.

The respondent presented a petition for a rule to show cause why your petitioner's action should not be dismissed for want of jurisdiction on the ground that its principal office was located in Baltimore, Maryland, and that, by virtue of the last sentence of Section 33 of the Jones Act, it could be sued in that city only (R. 5). The court of Common Pleas dismissed your petitioner's action by making absolute the rule (R. 8).

Your petitioner appealed to the Supreme Court of Pennsylvania, assigning as error the order of the Common Pleas Court (R. 11). On February 3rd, 1932, the Supreme Court affirmed the order of the Common Pleas Court (R. 13). Your petitioner presented a petition for re-argument, which was refused by the Supreme Court on March 14th, 1932 (R. 16). Your petitioner presented to this Court a petition for a writ of certiorari to the Supreme Court of Pennsylvania, and an order, granting the petition, was entered by this Court on October 10th, 1932.

II.

THE QUESTION PRESENTED.

May the venue provision of Section 33 of the Jones Act of 1920 (U. S. Code, Title 45, Section 688, 41 Statutes at Large, 1007) which directs—

> "Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides, or in which his principal office is located."

be properly construed so as to apply to state courts, when actions pursuant to the section are brought therein, or is it confined in its application to federal courts?

III.

ARGUMENT.

Summary of Argument.

Point A. The provision does not deal with jurisdiction in the sense of subject matter but with venue. The jurisdiction of state courts over the subject matter exists because of the authority conferred upon them by the constitutions and laws of their respective states, and because Congress has not given an exclusive jurisdiction to the federal courts.

Point B. A direction of venue does not limit the cause of action, but is a regulation of jurisdiction and procedure. It is not an enactment of substantive law but relates purely to the mechanics of procedure.

Point C. Congress cannot regulate venue in the State Courts.

Point D. Congress has not, by this provision, attempted to regulate venue in state courts.

Point E. The Pennsylvania venue provision applies and under that this action is properly brought.

Point A. Jurisdiction of State Courts.

Prior to the adoption of the Federal Constitution the States existed as absolute and independent sovereignties, and their courts had complete and unrestricted jurisdiction over all subjects. By the adoption of the Constitution, the States delegated to the federal government certain judicial powers. The grant was made in *Article 3, Section 2, Clause 1, U. S. Constitution.* So far as this case is concerned, it is but necessary to note that by that clause the judicial power of the federal government was extended to all causes of admiralty cognizance. This was construed to mean that the federal judiciary had sole jurisdiction of causes peculiarly maritime, viz. libels in rem, and matters of prize, but that the common law remedy of an action in personam, where competent to enforce the maritime right, was still available in state courts. *The Hine v. Trevor,* 4 Wallace 555, 571; *Taylor v. Carryl,* 20 Howard 583, 598.

This principle was embodied in the *savings to suitors clause* of *Section 9* of the *Judiciary Act of 1789* (now contained in *Section 24, Judicial Code, U. S. C. A. Title 28, Section 41.*)

The States retained in their courts all such jurisdiction as was not expressly granted to the federal government, and which would not be incompatible with a similar exercise of such power by the federal government.

> *The Federalist, Letter No. 82,*
> *Kent's Commentaries,* page 395, et seq.,
> *The Collector v. Day,* 11 Wallace 113, 124.

The doctrine arose and has always been recognized that Congress in pursuance of the legislative powers granted to it by the Constitution has an absolute election in determining what tribunals shall enforce its enactments. When it creates a cause of action, the enforcement of which is by the Federal Constitution given exclusively to the fed-

eral judiciary, it has no such election. If, however, the cause of action it does create is one which is subject to the jurisdiction of both federal and state courts, then Congress has an absolute right to determine whether the federal courts shall have an exclusive jurisdiction or the concurrent jurisdiction of both judicial systems shall be exercised. It may give an exclusive jurisdiction to the federal courts and thus deprive the state courts of their concurrent jurisdiction, arising from a pre-existing authority over causes of action of a similar nature. If Congress does not give such an exclusive jurisdiction to the federal courts, the state courts then exercise what jurisdiction is granted them in the manner provided by the constitution and laws of their respective States.

Thus, Congress in providing for concurrent jurisdiction does not grant any power to the state courts; it has only a negative power of control. It cannot affect or limit their jurisdictional powers but may leave causes of action to their jurisdiction when it chooses. This was clearly stated by Mr. Justice Washington in *Houston v. Moore,* 5 Wheaton 1, 27:

> "For I hold it to be perfectly clear, that Congress can not confer any jurisdiction upon any courts but such as exist under the constitution and laws of the United States, although the State Courts may exercise jurisdiction on questions authorized by the laws of the state and not prohibited by the exclusive jurisdiction of the federal courts."

And that doctrine has been repeatedly held by this Court. *Teal v. Felton,* 12 Howard 284, 292; *Claflin v. Houseman,* 93 U. S. 130, 135; *Grubb v. Public Utilities Comm.,* 281 U. S. 470, 476. It was expressly pointed out by *Chancellor Kent,* in his *Commentaries,* pp. 399, 341, when he declared that unless Congress expressly granted an exclusive jurisdiction to the federal courts the state courts would retain a concurrent jurisdiction; that Congress can-

not compel a state court to entertain jurisdiction, but only permits them to do so when they have an inherent jurisdiction adequate to the case; that they do not become courts subject to regulation by Congress.

The substantive laws enacted by Congress become, by operation of the *supremacy clause* of the *U. S. Constitution*, the laws of the several states, and a duty arises upon the part of the state courts to enforce such laws when they are competent by reason of their own jurisdiction and their state procedure is adequate to give the desired relief. *Claflin v. Houseman*, supra; *Second Employers Liability Cases*, 223 U. S. 1.

In *Panama Railroad Co. v. Johnson*, 264 U. S. 375, this Court construed the last sentence of the Jones Act, Section 33, as not to confer an exclusive jurisdiction of the subject matter upon the federal court designated, but only to regulate venue in those courts. In *Engel v. Davenport*, 271 U. S. 33, and in *Panama Railroad Co. v. Vasquez*, 271 U. S. 577, this Court held that the state courts had a concurrent jurisdiction, and that this provision did not purport to confer an exclusive jurisdiction on the federal courts.

It has now been determined that the state courts have jurisdiction by reason of their own authority and not by reason of any grant by Congress; that this provision of the Jones Act deals only with venue. It next becomes necessary to examine and determine the nature of venue.

Point B. Definition of Venue.

In *Tenn. Coal & Iron Co. v. George,* 233 U. S. 354, an action was brought in Georgia by an employee against his employer to recover damages for an injury received in Alabama. He relied for his recovery upon an Alabama statute which made the employer liable to the employee for injuries caused by defects in machinery, and further provided: "All actions under said section 3910 must be brought in a court of competent jurisdiction within the state of Alabama and not elsewhere." It was contended that the Georgia court could not take jurisdiction because this provision restricted the cause of action to the Alabama courts and was entitled to full faith and credit in the courts of other states. This Court held that the full faith and credit clause only dealt with matters of substantive law; that the place of bringing an action, even though the direction be embodied in the statute creating a new cause of action, is not a part of that cause of action; that venue does not impose a limitation upon the right created but upon the jurisdiction of a court; and that Alabama could not control the exercise of jurisdiction by Georgia courts. (page 358)

In *Hustead v. Mo. Pac. Rwy. Co.,* 143 Mo. App. 623, an action was brought in Missouri for a death which occurred in Kansas against a railroad corporation; it was contended by the defendant that the action was improper by reason of a provision in the Kansas statute creating the right, which directed that such actions against common carriers should be brought in certain designated counties. The court held that the direction did not destroy the transitory nature of the action but only regulated the procedure in Kansas courts; that prescribing where an action shall be brought has nothing to do with the creation of the right of action; that there was no more reason for saying that this provision applied to courts of other jurisdictions than that any venue provision, even though not in the statute creating the right, also so applied. (pp. 624, 625)

See also: *Philles v. Mo. Pac. Ry. Co.*, 141 Mo. App. 561.

This Court necessarily came to this conclusion in the *First Panama Railroad Case*, supra, when it held that the venue provision of the Jones Act could be waived by the defendant's consenting to the federal court's jurisdiction. That conclusion could not have been reached if the provision had been a limitation upon the cause of action.

It has thus far been established that the jurisdiction of state courts over actions under the Jones Act exists by reason of the powers granted them by the laws of the states; that this provision is a regulation of the jurisdiction or procedure of courts. It next becomes necessary to determine whether Congress can regulate the jurisdiction and procedure of state courts.

Point C. Congress cannot regulate venue in State Courts.

It is the petitioner's contention that there is no power in Congress to regulate jurisdiction or prescribe rules of procedure in state courts; that this rule prevails even though the subject matter of the state court's exercise of jurisdiction arises from an enactment by Congress. It has been clearly demonstrated in the first point of this argument that the latter fact does not enlarge the powers of Congress, since it does not confer such jurisdiction but merely recognizes it.

This principle is embodied in the *Tenth Amendment, U. S. Constitution,* for since such a power is not granted to the federal government it is necessarily reserved to the States. It is extremely difficult to point to any decision of this Court which squarely upholds this principle, for the obvious reason that since Congress has not this power it has never attempted to exercise it. The doctrine has, however, been recognized frequently in the decisions of this Court and the State Courts.

In *Calder v. Bull,* 3 Dallas 386, this Court recognized this doctrine, and Mr. Justice Chase stated (p. 387) that "the establishing courts of justice . . . and the making regulations for the administration of justice, within each state according to its laws', was the exclusive province of State Legislatures and had not been granted to the federal government.

In *Collector v. Day,* 11 Wallace 113, this principle was the basis for the denial to Congress of the power to tax the salaries of state judges, and it was pointed out that the maintenance of a judiciary is a sovereign power of the state governments in respect to which the states are as independent of the federal government as that government is of the states. (p. 126)

In *Rushworth v. Judges of Common Pleas,* 58 N. J. L. 97, it was contended that a New Jersey statute which provided that no person should be naturalized within thirty days preceding an election was unconstitutional in that the power to direct the process of naturalization had been vested exclusively in Congress. The court rejected this contention and said (p. 100):

> "Congress is without power to interfere with or control state courts, except insofar as the federal courts have appellate jurisdiction."

And, p. 101:

> "There has been no surrender by the states of the right to establish their own courts, to define or limit their jurisdiction and functions, and to regulate and control them in all respects, except as to appellate jurisdiction and as to subject matters within the exclusive jurisdictions of the United States.
>
> "The state establishes its own courts, defines their jurisdiction, appoints its judges and pays their salaries."

Thus, it has been held that Congress is without power to prescribe rules of evidence for state courts. *People ex rel. Barbour v. Gates,* 43 N. Y. 40; *Caldwell v. N. J. Steamboat Co.,* 47 N. Y. 282; *Carpenter v. Snelling,* 97 Mass. 452.

In *Chambers v. B. & O. R. R.,* 207 U. S. 142, it was held that "subject to the restrictions of the Federal Constitution, the state may determine the limits of the jurisdiction of its Courts, and the character of the controversies which shall be heard in them". (p. 148)

In the *Second Employers Liability Cases,* supra, this Court, after explaining the ground upon which the statute was enforcible in state courts as of right, recognized this want of authority upon the part of Congress, and said (p. 56):

> "Because of some general observations in the opinion of the Circuit Court of Errors, and to the end that the remaining ground of decision advanced therein may be more accurately understood, we deem it well to observe there there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to control or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the act of Congress and susceptible of adjudication according to the prevailing rules of procedure."

The decision of this Court which most clearly shows the error into which the Pennsylvania Supreme Court fell in construing the venue provision of the Jones Act to apply to state courts is *Minneapolis & St. L. R. Co. v. Bombolis,* 241 U. S. 211. In that case an action was brought in a Minnesota state court under the federal Employers' Liability Act. It was contended by the railroad company that the Minnesota court could not enforce the cause of ac-

tion because a verdict by five-sixths of the jury was permitted under state law; that, since the Seventh Amendment to the Constitution required an unanimous verdict, the amendment was a limitation upon the power of Congress to create causes of action enforcible in courts and that by reason thereof Congress should limit every right created by it by requiring the court enforcing the right to become bound by the restriction of the amendment. This Court, speaking through Mr. Chief Justice White, said, p. 221:

> "Moreover the proposition is in conflict with an essential principle upon which our dual constitutional system of government rests, that is, that lawful rights of the citizen, whether arising from a legislative exercise of state or national power, unless excepted by express constitutional limitation or valid legislation to that effect, are concurrently subject to be enforced in the courts of the state or nation when such rights come within the general scope of the jurisdiction conferred upon such courts by the authority, state or nation, creating them. This principle was made the basis of the first federal Judiciary Act and has prevailed in theory and practice ever since as to rights of every character, whether derived from constitutional grant or legislative enactment, state or national. In fact this theory and practice is but an expression of the principles underlying the constitution and which cause the governments and courts of both the nation and the several States not to be strange or foreign to each other in the broad sense of that word, but to be all courts of a common country, all within the orbit of their lawful authority being charged with the duty to safeguard and enforce the right of every citizen without reference to the particular exercise of the governmental power from which the right may have arisen, if only the authority to enforce such right comes generally within the scope of the jurisdiction conferred by the government creating them. And it is a forgetfulness of this truth which doubtless led to the suggestion made in the argument that the ruling in Mondou v. N. Y. N. H. & H. R. R. Co., 223 U. S.

1, had overthrown the ancient and settled landmarks and had caused state courts to become courts of the United States exercising a jurisdiction conferred by Congress, whenever the duty was cast upon them to enforce a federal right. It is true in the Mondou case it was held that where the general jurisdiction conferred by the state law upon a state court embraced otherwise causes of action created by an act of Congress, it would be a violation of duty under the Constitution for the court to refuse to enforce a right arising from the law of the United States because of conceptions of impolicy or want of wisdom on part of Congress in having called into play its lawful powers. But that ruling in no sense implied that the duty which was declared to exist on the part of the state court depended upon the conception that for the purpose of enforcing the right the state court was to be treated as a federal court deriving its authority not from the State creating it, but from the United States. On the contrary, the principle upon which the Mondou case rested, while not questioning the diverse governmental sources from which the states and national courts drew their authority, recognized the unity of governments, national and state, and the common fealty of all courts, both state and national, to both state and national constitutions, and the duty resting upon them, when it was within the scope of their authority to protect and enforce the rights lawfully created, without reference to the particular government from whose exercise of lawful power the right arose."

In *Walton v. Pryor*, 276 Ill. 563, 246 U. S. 675, an action was brought in Illinois under the federal Employers Liability Act for a death occurring in Missouri. An Illinois statute provided that no action could be brought in the state for a death occurring without the state. It was contended that the court was compelled to entertain this cause of action because it arose by reason of a federal enactment. The court held that the power of Congress did not extend that far; that its substantive enactments superseded state

law, but that there was a clear distinction between creating a cause of action and providing for its enforcement; that the right came into existence by the enactment of law but that the remedy is provided by the establishment of courts and bestowing upon them jurisdiction; that the court's jurisdiction could not be controlled by federal enactment (p. 569).

In *Chi. M. & St. P. R. Co. v. McGinley,* 175 Wisc. 565, it was contended that the venue provision of Section 6 of the 1910 Amendment to the federal Employers Liability Act applied to an action brought in the state court, and that the venue provision of Wisconsin providing that actions against foreign corporations could be brought where the plaintiff chose was inapplicable. The court held that its jurisdiction did not exist by reason of a grant from Congress but by the constitution and laws of the State; that Congress could permit state courts to act but could not control their exercise of jurisdiction (p. 570).

In *Loftus v. Penna. Railroad Co.,* 107 Ohio St. 352, a resident of Pennsylvania, who was injured in the course of his employment in Pennsylvania, brought an action in Ohio under the federal Employers Liability Act. A statute of Ohio provided that actions against transportation companies should be brought only in the county of plaintiff's residence or where the accident occurred. It was contended that since this action was brought under the federal act the Ohio statute could not be applied. The court held that the Ohio venue provision would apply even though to defeat a federal cause of action and that it was beyond the powers of Congress to require a state court to exercise jurisdiction when by the laws of the state it was prohibited from so doing (pp. 356, 359).

Doll v. Chi. Gr. W. R. Co., 159 Minn. 323, was an action under the federal Employers Liability Act, and it was contended that it could be brought in a state court only if that court was of the county wherein suit could be brought in the federal district court. The court held otherwise

and said (p. 324) "Congress may create rights and provide for their enforcement in the state courts, and, in such cases, those courts may not decline jurisdiction. But Congress may not go farther and govern the state court on questions of venue, nor direct where or within what limited portion of the state its court may function with respect to cases within their jurisdiction. That is a question for local regulation and state authority."

In *Murnan v. Wabash R. Co.*, 246 N. Y. 244, an action was instituted in the New York court by a resident of Connecticut against an Indiana corporation to recover under the federal Employers Liability Act for an injury that occurred in Detroit. A statute in New York provides that where an action is brought by one non-resident against another founded upon a tort occurring in another state it is discretionary in the court to assume or not to assume jurisdiction. It was contended that by reason of the doctrine enunciated by this court in the *Second Employers Liability Cases, supra,* the New York court having jurisdiction of such a case was compelled to exercise it. The court pointed out that this Court had in that case said that there was no attempt by Congress to enlarge the jurisdiction of state courts, and said (p. 248):

> "The courts of New York exercise their discretion in all cases where the tort action is brought by one non-resident against another under the laws of another state. The practice may be anomalous but it is well established. That Congress has undertaken to regulate the exercise of jurisdiction by our courts by making compulsory what in other similar cases is discretionary seems an unreasonable conclusion and a resulting invasion of the powers of our tribunals as heretofore exercised. We conclude that a litigant who brings his action under the federal Employers Liability Act stands before the court in no different attitude than a litigant who brings his action under a statute of a sister state. He may not be cast out because he

is suing under the act of Congress. He may not enforce his rights merely because he is suing under the act."

In *Douglass v. N. Y. N. H. & H. R. Co.*, 279 U. S. 377, the same contention was made, and this Court sustained the principles stated by the New York Court of Appeals (p. 387).

It is submitted that the doctrine enunciated is clear and unmistakable. Congress may create a cause of action enforcible in state courts, but it may not provide for the manner of its enforcement in those courts. It may not determine the remedy to be afforded by those courts. It has no power to regulate the venue of actions in state courts, for such an attempt would be an interference with their jurisdictional and procedural powers which were never delegated to the federal government.

The principle of the *Murnan Case* clearly demonstrates that the provision of the Jones Act cannot be applied to state courts. If a foreign corporation should have its principal office in New York, and a seaman, resident of another state, should be injured in another state, he could not sue as of right in a New York court, even though that court should be "of the district in which the defendant employer resides or in which his principal office is located".

It has thus far been determined that this provision does not deal with jurisdiction in the sense of subject matter but with venue; that the state courts have jurisdiction if and only if they are given such authority by the constitution and laws of their respective states, and do not derive such authority from a grant by Congress; that venue deals with jurisdiction or power of courts, and controls the remedy granted by their authority; that Congress is without power to regulate venue in state courts, for an attempt to do so would be an interference with a right reserved to the States by the Tenth Amendment. It now becomes necessary to determine whether Congress has attempted to exercise such a power.

Point D. Congress has not, by this provision, attempted to regulate venue in state courts.

First: The language used compels this construction. The use of the term "district" and the use of the singular, "the court", in designating the tribunal leave no room for doubt. Congress in setting up rules of practice and procedure is speaking in reference to its own courts, and the language used bears out this intention. If Congress were, by some method, attempting to go so far as to regulate jurisdiction and procedure in state courts it would certainly make its meaning clear and explicitly mention the state courts as such, instead of permitting them to be included by inference. It would not leave this to be done by a straining of the language used, and it is submitted that this is necessary to make the terms used fit the state courts. It may be said that the language can be fitted to the state courts, but it is not a natural and ordinary use of the terms. If Congress had said "courts in whose territorial jurisdiction the employer resides", or had used some phrase as would naturally embrace state courts, it might be conceded that it has attempted to do so. But with the mere reference to a singular tribunal and the use of the term "district", which although not exclusively confined to federal courts, is apparently of a federal connotation, it is submitted that the language cannot support a construction such as given by the Pennsylvania courts.

Second: It is a well established principle that when a statute is susceptible of two constructions, one of which would cause it to be declared unconstitutional, and the other of which would sustain its validity, the latter must be adopted. *Panama R. Co. v. Johnson,* 264 U. S. 375, 390; *Mo. Pac. Ry. Co. v. Boone,* 270 U. S. 466, 471, 472; *Richman-Anchor Co. v. U. S.,* 275 U. S. 142, 148; *Lucas v. Alexander,* 279 U. S. 573, 577; *Crowell v. Benson,* 52 S. Ct. 285, 296.

Under this rule of construction, the venue provision of the Jones Act must be construed so that it is limited in its effect to the federal courts. A construction which would apply that provision to state courts would make the statute unconstitutional and so, must be discarded.

It has thus far been determined that this provision of the Jones Act does not apply to state courts. It next becomes necessary to determine whether the remedial provision of Pennsylvania law, regulating venue, should be applied and whether or not it fits the manner in which this action was brought.

Point E. The Pennsylvania venue provision applies and under that this action is properly brought.

Since venue deals only with remedy, with the right of a court to compel a party to appear before it, or to hear a particular cause of action, and not with the right of the plaintiff to institute his action, the Pennsylvania rule applies.

In *Red Cross Line v. Atl. Fruit Line,* 264 U. S. 109, a bill in equity was filed in a New York Court to require specific performance of an agreement to arbitrate a maritime contract, in compliance with a New York Statute. The rule in the federal courts was that executory agreements to arbitrate admiralty disputes would not be enforced, although the rule gave effect to an executed agreement to arbitrate. It was contended that the New York statute was unconstitutional because violative of the exclusive federal power over admiralty matters. This Court rejected that contention, and declared that the right of a common law remedy saved to suitors, although not including attempted changes by the States in substantive admiralty law, does include all means other than admiralty proceedings which may be used to enforce the right or redress the injury; that a State can not give a remedy in rem, but otherwise is free to

adopt such remedies as it sees fit; that New York had the power to confer upon its courts the authority to compel parties within its jurisdiction to specifically perform an agreement for arbitration valid by maritime law (p. 123).

In *St. L. B. & I. M. Ry. v. Taylor*, 210 U. S. 208, an action was instituted in the St. Louis court against a Texas corporation which did no business in Missouri, by means of foreign attachment. The defendant contended that since the action was founded upon a federal law, the Carmack Amendment, the right could be enforced only under the same conditions applicable in federal courts; and that since the action could not be brought in a federal court in Missouri, the State court could not act. This Court held this contention groundless, and pointed out that Missouri conferred jurisdiction over the subject matter upon its courts, and provided that such jurisdiction could be exercised to the extent of apply property attached to the satisfaction of the claim, even without personal service; that the fact that such a remedy was not available in the federal court for Missouri was without legal significance; that "the origin of the right does not affect the manner of administering the remedy. The grant of concurrent jurisdiction implies that, in the first instance, the plaintiff shall have the choice of the court. As an incident, he is entitled to whatever remedial advantage inheres in the particular forum" (p. 208).

The summons in this case was issued under the Pennsylvania *Act of June 8, 1911, P. L. 1710* (Purdon's Penna. Stats. Ann., Title 15, Sects. 3141, 3142), which requires foreign corporations, as a precedent to doing business in Pennsylvania, to register and appoint the Secretary of the Commonwealth their agent for the service of process. It provides, Section 2:

> " . . . Such process may be issued by any Court or Magistrate or Justice of the Peace having jurisdic-

tion of the subject-matter in controversy, in any county of the Commonwealth in which said corporation shall have its principal place of business or in such county in which the right of action arose."

This statute has been construed as mandatory upon the Pennsylvania courts, leaving in them no discretion but an imperative duty. In *Shambe v. D. & H. R. Co.*, 298 Pa. 240, 246, the court declared that the place for institution of an action against a foreign corporation which has registered, is for the Legislature to determine and not for the court.

In this case, the respondent, the Merchants & Miners Transportation Company, registered under the statute and designated Philadelphia County as the location of its principal place of business in Pennsylvania. Furthermore, this cause of action arose in Philadelphia county.

A rule, leaving the venue of actions under the Jones Act in state courts to determination by state law cannot work injustice, for, wherever the rule of venue as prescribed by state law is of such a nature as to constitute a burden upon the interstate commerce of the employer, such jurisdiction is ousted. This has been held by this Court in actions in state courts under the federal Employers' Liability Act. See *Michigan Central R. v. Mix*, 278 U. S. 492; *Hoffman v. Missouri*, 274 U. S. 21.

The rule, for which the respondent contends, does work a manifest injustice. This is aptly illustrated in *State ex rel. Sullivan v. Tazewell*, 123 Ore. 326. There an employee of a steamship company, who worked exclusively as a pilot on Oregon rivers, was injured. His employer was a Delaware corporation with its principal office in New York City.

IV.

CONCLUSION.

It is submitted that it has been clearly established that Congressional enactment is not the source of the state court's jurisdiction over causes of action under the Jones Act, but that such jurisdiction depends upon the constitution and laws of the state itself; that this provision is a regulation of venue, and consequently of jurisdiction and procedure; that Congress cannot constitutionally regulate jurisdiction and procedure in state courts; that Congress has not attempted to do so; that, since venue deals only with remedy, the remedial statute of Pennsylvania determines the venue of this action, and under such statute this action is properly brought.

It is submitted that it is a necessary conclusion that the last sentence of Section 33 of the Jones Act must be construed to apply to federal courts alone. It has been so construed in *Lynott v. Great Lakes T. Co.*, 234 N. Y. 626, 202 N. Y. A. D. 210; *Pattrone v. Howlett*, 237 N. Y. 626; *Rodigrues v. Transmarine Corp.*, 216 N. Y. A. D. 337; *Bennet v. Connelly*, 122 N. Y. Misc. 149; *State ex rel. Sullivan v. Tazewell*, supra.

Counsel for petitioner respectfully request this Court to place that construction upon the statute and, to that end, to reverse the order and judgment of the Supreme Court of Pennsylvania.

Respectfully submitted,

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IN THE

Supreme Court of the United States

No. 90 October Term, 1932.

ANNA S. BAINBRIDGE,
Petitioner,

v.

MERCHANTS & MINERS TRANSPORTATION COMPANY.

BRIEF FOR RESPONDENT.

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IN THE

Supreme Court of the United States.

October Term, 1932. No. 90.

ANNA S. BAINBRIDGE,
Petitioner,

v.

MERCHANTS & MINERS TRANSPORTATION COMPANY.

BRIEF FOR RESPONDENT.

I.

STATEMENT OF THE CASE.

The statement of the matter involved, as set forth in the Brief for the Petitioner, is substantially accurate. Negligence, however, is not admitted by the Respondent.

The Merchants & Miners Transportation Company, the Respondent, is a corporation authorized and existing under and by virtue of the laws of the State of Maryland, having its principal office in the City of Baltimore, Maryland (R., 4). It was registered under the Act of Assembly of the Commonwealth of Pennsylvania of June 8, 1911, P. L. 710, requiring foreign corporations, as a precedent to doing business in Pennsylvania, to register and appoint the Secretary of the Commonwealth their agent for the service of process (R., 4). The process, issued by Court of Common

Pleas No. 4 of Philadelphia County, was served upon the Secretary of the Commonwealth of Pennsylvania under the provisions of the Act of June 8, 1911. An appearance *de bene esse* was entered in the action on behalf of the Respondent for the purpose of objection to the jurisdiction of the Court out of which the process issued (R., 1, 4). No issues other than those relating to the jurisdiction of the Court have been joined in the cause.

II.

ARGUMENT.

Summary of Argument.

1. The venue clause of Section 33 of the Merchant Marine Act of 1920 was intended by Congress to apply to all actions brought under the Act, whether in State Courts or in Federal Courts.

2. Congress has power to create a privilege of exemption from suit in State Courts, established elsewhere than in the District in which the defendant resides, in causes of action arising under the laws enacted by it.

3. The limitation upon the power of the Congress contended for by Petitioner, and the interpretations placed upon the Statute by Petitioner, would destroy the uniformity of the maritime law.

I. The Venue Clause of Section 33 of the Merchant Marine Act of 1920, Was Intended by Congress to Apply to All Actions Brought Under the Act, Whether in State Courts or in Federal Courts.

The question this Court is asked to decide is whether the venue clause of Section 33 of the Merchant Marine Act of 1920, applies to all actions brought under the Act or whether it applies only to actions brought in the courts of the United States. The language of the Section is as follows:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury and *in such action* all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as the result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction *in such actions* shall be under the court of the district in which the defendant employer resides or in which his principal office is located." (Italics ours.)

There is certainly no language in the venue clause or in the whole Section expressive of an intention to confine its qualifications with respect to jurisdiction to the Federal Courts. The use of the singular "court" and the use of the word "district" do not indicate such an intention. The learned judge of Court of Common Pleas No. 4 of Phila-

delphia County in his opinion (R., 7), has effectively answered this contention of petitioner. See also *Petterson* v. *Standard Oil Co. of New Jersey*, 41 Fed. (2d) 219 (S. D. N. Y., 1924). On the other hand the use of the words "*in such actions*" clearly evidences legislative intent that the venue provision shall apply to all actions brought under the Act. The Act grants to seamen an election to maintain an action for damages at law. It provides that "*in such action*" the maritime law theretofore applied shall be modified by granting to seamen the benefits of Statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees. It limits the jurisdiction *in such actions* to the district in which the defendant employer resides or in which his principal office is located.

This Court has already explained the meaning of the phrase "*in such action*" in *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375, using the following language (p. 391):

> "The words 'in such action' in the succeeding clause are all that are troublesome. But we do not regard them as meaning that the seaman may have the benefit of the new rules if he sues on the law side of the court, but not if he sues on the admiralty side. Such a distinction would be so unreasonable that we are unwilling to attribute to Congress a purpose to make it. A more reasonable view, consistent with the spirit and purpose of the statute as a whole, is that the words are used in the sense of 'an action to recover damages for such injuries,' the emphasis being on the object of the suit rather than the jurisdiction in which it is brought."

Under familiar principles of statutory construction the phrases, "*in such action*" in the body of the Section,

and *"in such actions"* in the venue clause, should receive a like interpretation. See *Bannon* v. *Seaboard Air Line Ry. Co., et al.*, 52 Fed. (2d) 886, 888 (D. C. S. D. Ga.). And this Court has given them such like interpretation. In *Panama R. R. Co.* v. *Johnson,* supra, the Court says (p. 384):

> "A reading of the provision (the venue clause) . . . makes it reasonably certain that the provision is not intended to affect the general jurisdiction of the District Courts as defined in § 24, but only to prescribe the venue for *actions brought under the new act* of which it is a part." (Italics ours.)

The proceedings in Congress confirm this interpretation. The Merchant Marine Act of 1920 originated in the House of Representatives as House Resolution 10378, Sixty-sixth Congress, Second Session. As passed by the House of Representatives the bill did not contain what is now Section 33. The Senate added among other amendments to the bill, the present Section 33 with one important omission. As passed by the Senate the venue clause was not included in this Section. (Senate Reports, Second Session, Sixty-sixth Congress, Report No. 573, Calendar 520.) It was evidently the intention of the Senate that the venue provisions of Section 6 of the Employers' Liability Act should govern actions brought by seamen under the proposed amendment. The House having declined to concur in certain Senate amendments, including the amendment under discussion, the bill went to conference. In conference the Senate amendment was further amended by adding thereto the venue clause, "Jurisdiction in such actions shall be under the Court of the district in which the defendant employer resides or in which its principal office is

located." (Sixty-sixth Congress, Second Session, House Reports, Vol. 3, Report No. 1093.) The conference report is dated June 2, 1920; the Act was passed two days later, incorporating the amended Section 33 as recommended by the conferees.

It is apparent that the House was unwilling to make such a sweeping extension of shipowners' liability as this Act contemplated, without granting to them some protection in the qualifying privilege of having actions under the Act tried where the shipowner is best able to defend them. The practical aspects of the change clearly show the reasons behind the House's concern. Before the passage of the Merchant Marine Act of 1920, the liability of shipowners to members of their crews was confined to maintenance and cure and wages, and in the case of a vessel's unseaworthiness, to indemnity. While both of these types of liability involved the possibility of litigation, the litigation presented questions of a relatively simple character. The evidence necessary for the defense of such litigation was readily available or within the shipowner's control. The jurisdiction in which the shipowner was called upon to defend such litigation was less material, because the issues of fact were simpler, the evidence was reasonably obtainable, and the questions involved were such that a substantial degree of uniformity was assured. From the earliest beginnings of the maritime law down to the passage of the Jones Act, this relatively simple system of maritime rights and obligations in cases of personal injury had prevailed.

The passage of the Merchant Marine Act of 1920, introducing liability for the negligence of fellow servants into the maritime law and otherwise changing the responsibility of the shipowner not only subjected the ship-

owner to increased litigation but rendered vastly more difficult the defense of litigation arising out of injuries to seamen. The issues of fact are much more complicated. The evidence which may be necessary for proper defense must in many cases be obtained from sources which are not readily available or within the shipowner's control. This increased burden upon the shipowner would be aggravated, if he were obliged to defend in any jurisdiction in which service of process might be obtained. It would be relieved in material measure, if the shipowner was obliged to defend only in the district in which the defendant resides or in which his principal office is located.

These considerations would very properly move Congress to insert the limitation in the new right of action created by the Merchant Marine Act that the jurisdiction in such actions shall be under the Court of the district in which the defendant employer resides, or in which his principal office is located. It is obvious that they are equally applicable whether the actions under the Act be brought in State or Federal Courts, as the learned Judge of the Court of Common Pleas of Philadelphia County correctly decided. Congress has created a new right in one party to a maritime relation, and has also created at the same time, and as a necessary incident to the extension of the prior right of such party, a privilege in the other party. Its intention to do so is clearly evidenced in the reasonableness of the provision, the circumstances under which the jurisdictional provision was written into the Act, and by the express provisions of the Statute as enacted.

II. Congress Has Power to Create a Privilege of Exemption From Suit in State Courts, Established Elsewhere Than in the District in Which the Defendant Resides, in Causes of Action Arising Under the Laws Enacted by It.

This Court has frequently affirmed the principle inherent in our dual system of government, that lawful rights of the citizen, whether arising from a legislative exercise of state or national power, unless excepted by express constitutional limitation or valid legislation to that effect, are concurrently subject to be enforced in the courts of the state or nation when such rights come within the general scope of the jurisdiction conferred upon such courts by the authority, state or nation, creating them. *Minneapolis & St. L. R. Co.* v. *Bombolis*, 241 U. S. 211, 221.

The Courts of the several states have concurrent jurisdiction with the Federal Courts, of all cases arising under Federal Statutes, unless exclusive jurisdiction is vested in the Federal Courts by the Federal Constitution or by Congress.

The jurisdiction thus exercised by the state courts is not conferred upon the state courts by Congress. In hearing and determining such causes of action based on Federal Statutes, the state courts exercise their own inherent jurisdiction.

The Judiciary Act of 1789 in its *savings to suitors clause* permitted the enforcement of a right sanctioned by the maritime law through any appropriate proceeding recognized at common law. And the right of action established by the Merchant Marine Act as a part of the maritime law is not limited by Congress to the Federal Courts, but the jurisdiction of the Federal Courts under the Act is

concurrent with that of the courts of the several states. *Engel* v. *Davenport*, 271 U. S. 33, 37, 38.

But Congress in pursuance of the legislative powers granted to it by the Constitution may limit the enforcement of rights created by the laws it enacts exclusively to the Federal Courts. It may impose qualifications upon the rights which it creates, which are binding upon the courts of the several states, where Congress permits concurrent jurisdiction.

In *Engel* v. *Davenport*, 271 U. S. 33, it was held, as appears in the syllabus, paragraph 3, that "the provision of the Employers' Liability Act that 'no action shall be maintained under this Act unless commenced within two years from the day the cause of action accrued' is one of substantive right, both setting a limit and necessarily implying that the action may be maintained, as a substantive right, within that period" (p. 38).

And Congress may properly preserve a privilege to the defendant, in connection with a right of action which it creates, as a reasonable qualification to the existence of the obligation which the Act creates, binding, by operation of the *supremacy clause* of the Constitution, upon the courts of the several states.

It is not a sound principle of construction that in matters subject to its exclusive control Congress must either confine jurisdiction of actions upon such matters exclusively to the Federal Courts, or part with all control over the remedy afforded.

The Naturalization Law permits the courts of the several states to exercise jurisdiction, under a Federal Statute, which confines the jurisdiction to aliens resident within the respective judicial districts of such courts.

The jurisdictional provisions of the statute are found in Title 8, Section 357, United States Code, which is as follows:

> "Sec. 357. Jurisdiction of naturalization courts. Exclusive jurisdiction to naturalize aliens as citizens of the United States is conferred upon the following specified courts: United States district courts in the states, United States district courts for the territories of Hawaii and Alaska, the Supreme Court of the District of Columbia; also all courts of record in any State or Territory having a seal, a clerk, and jurisdiction in actions at law or equity, in which the amount in controversy is unlimited.
>
> The naturalization jurisdiction of all courts herein specified, State, Territorial and Federal, shall extend only to aliens resident within the respective judicial districts of such courts."

In *Holmgren* v. *United States*, 217 U. S. 509, this Court made the following comment upon the power of the courts of the states to naturalize aliens (p. 517):

> "It is undoubtedly true that the right to create courts for the states does not exist in Congress. The Constitution provides (Art. III, Sec. 1) that the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. But it does not follow that Congress may not constitutionally authorize the magistrates or courts of a State to enforce a statute providing for a uniform system of naturalization, *and defining certain proceedings which, when complied with,* shall make the applicant a citizen of the United States. This Congress had undertaken to do in making provision for the naturalization of aliens to become citizens of the United States in a certain class of state courts—those of record having common law jurisdiction, a clerk and a seal." (Italics ours.)

In *Rump* v. *The Commonwealth*, 30 Pa. 475, the Supreme Court of Pennsylvania say (p. 477):

> "We need not notice the theoretic and practical conflict that occasionally appears between federal and state functions. To all orderly minds, the action of the state courts in the naturalization of foreigners, stands justified by the fact that it has had an almost undisputed growth since the organization of the Union.
>
> And our practice on this subject is fully justified by positive law. The stat. 13 Geo. 2, c. 7 (1740), followed by our provincial Act of 3d February 1743 (Hall & Sellers 197), made the naturalization of foreigners a subject of judicial cognisance before our state courts; and this jurisdiction has never been taken away. *The Constitution of the United States does not propose to change the jurisdiction, but only the rule of its exercise;* and the Acts of Congress expressly leave it to the courts.
>
> Naturalization is a judicial act: 4 Pet. 406. It is made so by positive law, and is essentially so in its nature; for it is a cause to be heard and decided on evidence, and involves a question of legal right. And although such cases arise under the constitution and laws of the United States, yet, *because these are part of the law of the land, and merely give the rule for the exercise of our admitted state functions,* our state courts may entertain this jurisdiction." (Italics ours.)

It clearly appears that while state courts in naturalization proceedings are exercising their own inherent jurisdiction, the federal statute operates to effectively qualify the right when exercised in the state tribunals. In no other way can the uniformity prescribed by the Constitution be made effective.

Under the Banking Act, suits against national banks may be brought in the courts of the several states, but the

jurisdiction is restricted to the courts of the county or city in which the banking association is located.

The jurisdictional provision is found in Title 12, Section 94, United States Code, which is as follows:

> "Venue of Suits. Actions and proceedings against any association under this chapter may be had in any district or Territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases."

This was Section 57 of the National Bank Act of June 3, 1864, subsequently incorporated in Section 5198 of the Revised Statutes by the Act of February 18, 1875, C. 80, Sec. 1; 18 Statutes at Large 320.

This Section was considered by this Court in the case of *Charlotte National Bank* v. *Morgan*, 132 U. S. 141. An action was instituted against the bank to recover a penalty for usury under the national banking law. Suit was brought in a county court of North Carolina, other than the court of the county in which the bank was located. Without claiming its privilege under the federal statute the bank defended on the merits and judgment was entered against it. It appealed to the Supreme Court of North Carolina, which affirmed. An appeal was then taken to this court on the ground that the only state court which could take cognizance of the action was that of the county in which the bank was located. In affirming the judgment this court said:

> "This exemption of national banking associations from suits in state courts, established elsewhere than in the county or city in which such associations were

located, was, we do not doubt, prescribed for the convenience of those institutions, and to prevent interruption in their business that might result from their books being sent to distant counties in obedience to process from state courts. *Bank of Bethel* v. *Pahquioque Bank*, 14 Wall. 383, 394; *Crocker* v. *Marine National Bank*, 101 Mass. 200. But, without indulging in conjecture as to the object of the exemption in question, *it is sufficient that it was granted by Congress, and, if it had been claimed by the defendant when appearing in the Superior Court of Cleveland County, must have been recognized.* The defendant did not, however, choose to claim immunity from suit in that court. It made defence upon the merits, and, having been unsuccessful, prosecuted a writ of error to the Supreme Court of the State, and in the latter tribunal, for the first time, claimed the immunity granted to it by Congress. This was too late. Considering the object as well as the words of the statute authorizing suit against a national banking association to be brought in the proper state court of the county where it is located, we are of opinion that *its exemption from suits in other courts of the same State was a personal privilege* that it could waive, and which, in this case, the defendant did waive, by appearing and making defence without claiming the immunity granted by Congress. No reason can be suggested why one court of a State, rather than another, both being of the same dignity, should take cognizance of a suit against a national bank, *except the convenience of the bank.* And this consideration supports the view that *the exemption of a national bank from suit in any state court except one of the county or city in which it is located is a personal privilege,* which it could claim or not, as it deemed necessary." (Italics ours.)

The contention that Congress has no power to regulate venue in state courts under any circumstances is unsound.

It arises from the mistaken conception that the federal and state sovereignties are foreign to each other. This Court, in *Claflin* v. *Houseman*, 93 U. S. 130, discusses the error in this conception. The Court say (p. 137):

> "If an act of congress gives a penalty to a party aggrieved, without specifying a remedy for its enforcement, there is no reason why it should not be enforced, if not provided otherwise by some act of Congress, by a proper action in a State court. The fact that a State court derives its existence and functions from the State laws is no reason why it should not afford relief; because it is subject also to the laws of the United States, and is just as much bound to recognize these as operative within the State as it is to recognize the State laws. The two together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent. The disposition to regard the laws of the United States as emanating from a foreign jurisdiction is founded on erroneous views of the nature and relations of the State and Federal governments."

The argument on behalf of the Petitioner fails to properly recognize the presence within the same territorial limits of dual sovereignties, each operating directly on the citizens, but one of them paramount over the other in respect to the subjects committed to its cognizance. Maritime legislation is within the exclusive province of Congress. It operates equally upon all persons engaged in maritime pursuits throughout the territorial limits of the United States. In the exercise of its legislative power Congress may create new rights for employees; it may

equally create privileges for employers, incident to the new right given the employees—limiting the enjoyment of the obligation created. There would seem to be no difference in principle between a limit to the time within which an action may be brought, in a state court, which has been held by this Court to be within the power of Congress, and a limit with respect to the district within which such action may be brought. And since the will of Congress is paramount within its allotted sphere of action both rights and privileges are binding upon all persons throughout the United States, including, by the very terms of the supremacy clause of the Constitution, the judges of state courts.

The rulings of this Court in *Tennessee Coal, Iron & Railroad Company* v. *George,* 233 U. S. 354, upon which the argument in support of the Petitioner's contention is largely based apply to a right of recovery very different in its legal incidents from the right which is asserted by the Petitioner. The principle involved in the decision in that case appears in the following quotation from the opinion (p. 360):

> "The courts of the sister State trying the case would be bound to give full faith and credit to all those substantial provisions of the statute which inhered in the cause of action or which name conditions on which the right to sue depend. But venue is no part of the right; and a State cannot create a transitory cause of action and at the same time destroy the right to sue on that transitory cause of action in any court having jurisdiction. That jurisdiction is to be determined by the law of the court's creation and cannot be defeated by the extraterritorial operation of a statute of another State, even though it created the right of action."

The distinguishing factor in the case is that the Alabama Statute had no extraterritorial effect. The cause of action was transitory. The Georgia Court had jurisdiction of both parties. In the adjudication of the case it was bound by the *full faith and credit clause* and by comity to adopt the *lex loci* for the purpose of deciding the issues. But in so doing it was applying Georgia law, not Alabama law. See *Frick* v. *Pennsylvania*, 268 U. S. 472, 493, 494. All the case decided is that Georgia need not under the full faith and credit clause adopt that part of the Alabama statute which attempted to restrict the enforcement of the rights created to its own courts. That provision had nothing to do with the right created, was unnecessary to a decision of the case, and, of course, could not *ex proprio vigore* affect persons without the territorial limits of Alabama. The question whether a privilege of exemption from suit except at the residence of the defendant follows a created right, of which the privilege is an incident, was not involved in that case.

The distinction between *Tennessee, etc.*, v. *George*, supra, and the case at bar lies in the fact that here the applicable law is that of the territorial sovereign and that it is being applied within the territorial limits of that sovereignty. It is true that it is not being applied in the sovereign's own courts, but it is being applied in courts which are bound to give full effect to it as the supreme law of the land. The personal privilege of one party to the relation affected by the statute has equal standing with the right of the other party. The privilege is an integral part of the supreme law and in giving effect to it the state court has in substance not been deprived of jurisdiction but has in fact exercised it.

III. The Limitation Upon the Power of the Congress Contended for by the Petitioner, and the Interpretations Placed Upon the Statute by Petitioner Would Destroy the Uniformity of the Maritime Law.

In *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, this court said (p. 216):

> "And plainly, we think, no such legislation (i. e., state legislation) is valid if it contravenes the essential purpose expressed by an act of Congress or works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations. This limitation, at the least, is essential to the effective operation of the fundamental purposes for which such law was incorporated into our national laws by the Constitution itself."

The Merchant Marine Act contemplates a uniform rule of venue in all actions brought under the act, and its general application throughout the United States. The venue provisions of the laws of the several states are many and varied. To give effect to them in cases under this act would contravene the essential purpose expressed by the Act itself, and would materially interfere with the uniformity of the maritime law in its interstate relations. Moreover the enforcement of the limitation upon the federal courts and the exemption therefrom of the state courts, would produce the absurd result of transferring a considerable body of litigation from the admiralty courts, which are most competent to handle it, and even from the federal law courts, presided over by judges with admiralty experience, and possessing in most instances a procedure better adapted to the exigencies of maritime litigation, into the state courts

which are less competent by experience and procedural facilities to determine the issues with full justice to both parties.

In *Engel* v. *Davenport*, supra, this Court said:

> "In the Panama Railroad Case, p. 392, it was held that the contention that the Merchant Marine Act did not possess the uniformity in operation essential to its validity as a modification of the maritime law, was unfounded since the Employer's Liability Act which it adopted, had a uniform operation, which could not be deflected from 'by local statutes or local views of common law rules.' The period of time within which an action may be commenced is a material element in such uniformity of operation. And plainly, Congress in incorporating the provisions of the Employer's Liability Act into the Merchant Marine Act did not intend to exclude a provision so material, and to permit the uniform operation of the Merchant Marine Act to be destroyed by the varying provisions of the state statutes of limitation."

For the foregoing reasons it is respectfully submitted that the Order and Judgment of the Supreme Court of Pennsylvania be affirmed.

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SUPREME COURT OF THE UNITED STATES.

No. 90.—October Term, 1932.

Anna S. Bainbridge, Petitioner, *vs.* Merchants & Miners Transportation Company.	On Writ of Certiorari to the Supreme Court of the State of Pennsylvania.

[December 5, 1932.]

Mr. Justice Sutherland delivered the opinion of the Court.

Petitioner brought this action in the Court of Common Pleas of Philadelphia County, Pennsylvania, to recover damages for an injury sustained by her as a member of the crew of a steamship operated by respondent. The action was brought under the Jones Act, § 33 of the Merchant Marine Act of 1920, U. S. C., Title 46, § 688, which provides: "Jurisdiction* in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located." Respondent, contending that the court in which the action was brought was not of the proper district, since respondent's principal office was in Baltimore, Maryland, moved to dismiss the action for want of jurisdiction. The motion was sustained, and the action accordingly dismissed. The judgment of dismissal was affirmed by the state supreme court. 306 Pa. 204.

The question presented for our determination is whether the quoted provision in respect of jurisdiction applies to the state courts, or is limited to the federal courts. The decisions are conflicting, but we think the correct construction of the provision limits it to the courts of the United States. The word "district" is peculiarly apposite in that relation; but in order to apply it to a state court, whose territory for venue purposes may or may not be designated as a "district", an elasticity of interpretation would be required which it does not seem probable Congress had in mind. Thus in one instance, where an action had been brought in a state court, it was found necessary, in order to hold the provision ap-

*Meaning venue, Panama R. R. Co. *v.* Johnson, 264 U. S. 375, 384-385.

plicable, to interpret the word "district" as meaning "county" in which the defendant resides or has his principal office. *Wienbroer* v. *United States Shipping Board E. F. Corp.*, 299 Fed. 972. The contrary view limiting the provision to the federal courts, which we approve, is expressed in *Lynott* v. *Great Lakes Transit Corporation*, 202 App. Div. (N. Y.) 613, 619 (affirmed without opinion, 234 N. Y. 626); *Patrone* v. *Howlett*, 237 N. Y. 394, 397; *Rodrigues* v. *Transmarine Corporation*, 216 App. Div. (N. Y.) 337, 339; and *State ex rel. Sullivan* v. *Tazwell*, 123 Ore. 326, 330. Compare *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375, 384-385; *Engel* v. *Davenport*, 271 U. S. 33, 37-38. If the question were more doubtful than we think it is, we should be slow to impute to Congress an intention, if it has the power,** to interfere with the statutory provisions of the various states fixing the venue of their own courts. It follows that the venue should have been determined by the trial court in accordance with the law of the state.

Another question has been raised which, however, affects only the proceedings in this court. The Clerk was requested by counsel for petitioner to docket the case here under c. 113, 40 Stat. 683, U. S. C., Title 28, § 837, which provides:

"Courts of the United States, including appellate courts, hereafter shall be open to seamen, without furnishing bonds or prepayment of or making deposit to secure fees or costs, for the purpose of entering and prosecuting suit or suits in their own name and for their own benefit for wages or salvage and to enforce laws made for their health and safety."

The Clerk, being in doubt, required a deposit to secure his fees and costs, and accordingly this was made by counsel for petitioner.

In *Ex parte Abdu*, 247 U. S. 27, it was held that the corresponding provision then in force (c. 27, 40 Stat. 157) did not apply to appellate proceedings; but the words which now appear, "including appellate courts," were not in the provision as it then read. That case, therefore, is not in point. With these words added, the provision now applies to appellate proceedings.

**See and compare Chambers *v.* Baltimore & Ohio R. R., 207 U. S. 142, 148-149; Minn. & St. Louis R. R. *v.* Bombolis, 241 U. S. 211, 221; Second Employers' Liability Cases, 223 U. S. 1, 56-57; Douglas *v.* New Haven R. Co., 279 U. S. 377, 387-388; Calder *v.* Bull, 3 Dallas 386, 387; Ex parte Crandall, 52 F. (2d) 650, 654 (affirmed, 53 F. (2d) 969); Southern Ry. Co. *v.* Cochran, 56 F. (2d) 1019, 1020; Charlotte National Bank *v.* Morgan, 132 U. S. 141, 145; Doll *v.* Chicago Great Western R. Co., 159 Minn. 323, 324-325.

A more serious question is whether suits under the Jones Act may be regarded as suits by seamen "for wages or salvage" or "to enforce laws made for their health and safety." Such a suit is not for wages or salvage. Is it to enforce a law made for the health or safety of seamen? In *The Bennington*, 10 F. (2d) 799, the question was answered in the negative. In *Grant* v. *United States Shipping Board Emergency F. Corp.*, 24 F. (2d) 812, it was answered in the affirmative. The court in the latter case rejected the construction put upon the provision by the decision in *The Bennington* as too narrow and not in accord with the liberality Congress intended toward seamen, holding that the Jones Act, being an addition to the Seamen's Act, was intended to be consistent with the spirit of that legislation, which was directed to promote the welfare of American seamen. We agree with that view. The Jones Act is an amendment to § 20 of the Seamen's Act. The Jones Act has the effect of bringing into the maritime law, for the benefit of seamen, all appropriate statutes relating to employers' liability for the personal injury or death of railway employees. Both acts are to be treated as part of the maritime law. *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375, 389. Seamen have always been regarded as wards of the admiralty and their rights, wrongs and injuries a special subject of the admiralty jurisdiction. Benedict's Admiralty, 4th Ed., §§ 182, 603. The policy of Congress, as evidenced by its legislation, has been to deal with them as a favored class. *Robertson* v. *Baldwin*, 165 U. S. 275, 287. In the light of and to effectuate that policy, statutes enacted for their benefit should be liberally construed. The Seamen's Act, which includes the Jones Act by amendment, is entitled in part "An act to promote the welfare of American seamen . . . and to promote safety at sea." Chap. 153, 38 Stat. 1164. It requires little if any aid from the doctrine of liberal construction to enable us to say that the present suit is one to enforce a law made for the safety of seamen. Petitioner will not be required to prepay or make deposit to secure fees or costs, and the Clerk will be directed to refund the deposit already made.

The judgment below is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Judgment reversed.